



## Commission on Criminal and Juvenile Justice

### Minutes September 9, 2011

Camp George West  
15350 S. Golden Road, Building 100  
Golden, Colorado

#### Commission Members Attending:

James H. Davis, Chairman	Tom Clements	Eric Philp
David Kaplan, Vice-Chairman	Jeanne Smith	Alaurice Tafoya-Modi
Peter Hautzinger	Mark Waller	Regina Huerter
Bill Kilpatrick	Don Quick	Debra Zwirn
Rhonda Fields	Steven Siegel	Doug Wilson
Gilbert Martinez	Julie Krow	Pat Waak for Anthony Young
Reo Leslie, Jr.	John Morse	Charles Garcia
Claire Levy		

**Absent:** Inta Morris, Michael Dougherty, Regis Groff, Ellen Roberts, Grayson Robinson.

#### Call to Order and Opening Remarks:

The Chairman, James H. Davis, called the meeting to order at 12:37 p.m. Mr. Davis called for introductions and reviewed the day's agenda.

#### CCJJ Processes and Protocols Update:

Calendar: The next few months will involve several meetings where members will vote on recommendations. In October, there will be voting on Sex Offense/Offender recommendations. In November, recommendations from the Drug Policy Task Force will be voted upon. If the Comprehensive Sentencing Task Force develops recommendations, they will be voted on in December. CCJJ meetings will start promptly at 12:30. Also, it has been recommended that we approve minutes from the last meeting. This practice will begin at the next meeting. The Commission website has the calendar of the Commission, the Task Forces and the Working Groups.

Attendance: The declining attendance of Commission members has become a problem. Shall we revisit the issue of proxies? It may be important to have proxies when voting. It is important for members to attend all meetings because ideas are discussed prior to the meeting where voting occurs. The Commission members represent a constituency base and it is important that their voices be heard. The by-laws state that if a Commissioner has three or more unexcused absences

they may be removed. To be excused from a meeting requires nothing more than a call to CCJJ staff. Should the Chair and/or Vice-Chair be empowered to address this issue? An overview of the 2010 and 2011 meetings should be done to find out which Commission members have repeated absences. Then the Chair or Vice-Chair will give the individual a call to see if the member is still interested in participating.

Voting: How do Commission members feel about the “I can live with it” vote?

**Cons** - Some feel that the vote should be either “yes” or “no”. Those that are against this voting term feel the Commission is dealing with critical policy issues and should step forward with a firm decision. The concept of “I can live with it” is weak.

**Pros** - It is a way for a member to indicate that they will not stand in the way of a vote, even if they have reservations on some part of the recommendation. An individual represents more than just himself/herself. They represent a constituency and the “I can live with it” better reflects a group’s position.

The Legislative Policy and the Role and Membership of the CCJJ Legislative Committee was reviewed by the Commission. The Policy was passed based on the following vote:

I support it: 16

I do not support it: 1

The CCJJ Policy Relating to the Roles and Responsibilities for Legislative Recommendations were reviewed.

Discussion points:

1. What would the penalty be if a non-Commission task force member actively worked against a recommendation of the Commission? The actions of the task force/working group member should be brought to the attention of the Chair of the Task Force and the Commission.
2. Section II, subsection C states, “Member legislators are expected to refrain from sponsoring bills that are contrary to an official vote of the CCJJ on a recommendation.” There are issues that are discussed at a meeting and may be voted on that do not pass the “super majority” (70%) of the Commission vote. A legislator may still want to support an issue in the legislature that was not supported by the Commission. Is this different from an issue that was clearly voted down by the Commission?
3. Section II, subsection B, states, “Member legislators are expected to refrain from actively working to defeat or substantively change a CCJJ approved recommendation.”
  - a. This ties the hands of legislators. Legislators are elected to represent their constituents. What happens if a legislator does act against a CCJJ vote because his/her constituency demands it? Could or should the Chair of the Commission ask the legislator to step down from the Commission? Legislators are appointed by the leadership in either the House or Senate, not the executive branch.
  - b. The verbiage in section II of the policy currently states the actions of legislators and Commission members are “expected” and yet the actions of non-commission members are “encouraged.” This is a double standard. Can we not have expectations for legislators and Commission members? There should be one standard for everyone.

- c. A district attorney is an elected official and represents a constituency. If a Commission member who is a district attorney is willing to be quiet on a bill that he/she was against, but was passed by the Commission, why can't a legislator act the same way? Because a district attorney belongs to the Colorado District Attorney's Council who can fight against a bill. A legislator does not have a group that can work on their behalf.
4. The policy will be re-worked and resubmitted for review.

**Minority Overrepresentation Update:**

Minority overrepresentation was discussed at the last CCJJ meeting and it was agreed that a group would be formed to work on the issue. Three Commission members volunteered – Jim Davis, Michael Dougherty and Regi Huerter. Mr. Davis encouraged other members to think about joining. Alaurice Tafoya-Modi and Reo Leslie agreed to participate.

**Performance Measures Feedback:**

Updates on performance measures will be taken out of the annual report and be available on-line. This will allow for an on-going update on all of the CCJJ promulgated recommendations.

The Oversight Subcommittee met last May to examine non-legislative recommendations previously passed by the CCJJ and presented a status report to the Commission in June. The subcommittee reviewed the implementation status of each recommendation and developed categories to place the recommendations. The categories are:

1. No further action.
2. Recommendation is not yet completed. It can be reviewed next year. It could be on the way to being completed or cannot be completed.
3. Active monitoring. What else can we do to help the implementation of the recommendation? That person would report back to DCJ staff.
4. Since it was attempted to be implemented, there was information that was not available at the time that keeps it from being implemented.
5. Recommendations involving data sharing.

A vote will be taken today to approve the Oversight Subcommittee's process to post performance measure updates on the web; use the categories it has developed; and endorses the work it has done to this point. Regi Huerter moved to have the work of the Oversight Subcommittee approved. Pete Hautzinger seconded the motion. The Commission voted unanimously to approve the work of the Oversight Subcommittee.

**2008 Bond Recommendations: L-7, L-8, L-9, BP-39 and BP-40:**

Jefferson County has been examining the issue of bond for years and is working to reform various aspects of the bond system. Would the Commission be in favor of working with

Jefferson County on this endeavor? CCJJ passed a handful of bond recommendations in 2008 (L-7, L-8, L-9, BP-39 and BP-40) that have stalled for one reason or another. In order to avoid a duplication of efforts, it would be ideal for the Commission to work with Jefferson County on this initiative. Jefferson County has a handful of people willing to assist in this effort including Judge Enquist who could co-chair a subcommittee, and Mike Jones, a Criminal Justice Planner in Jefferson County, who would offer expertise. The membership would need to be expanded into other counties and include subject matter experts. The goal is to create an ad-hoc subcommittee to revisit and retool the 2008 CCJJ bond recommendations.

Discussion points:

1. There will be legislation brought forth by bondsmen this year.
2. DORA is conducting a sunset review of bail bond insurance. The report will be issued on October 14<sup>th</sup>.
3. The Commission came up with recommendations in 2008. Are you asking about changing them or asking the Commission to modify them? Are there areas that we can agree to and proceed?
4. A subcommittee would be created and invitations would be extended to opponents to participate in discussions and decisions.
5. Would this subcommittee come before the Commission before the end of the year with recommendations? Or would it take a more measured approach and educate its members first?
6. The ad hoc subcommittee will be formed with the chair being a voting member of the Commission.

### **Sex Offender/ Offenses Task Force Recommendations Preview:**

#### Registration Working Group

Maureen Cain presented the recommendations of this working group. No vote will take place today, they will be voted upon next month.

The working group liked the term “lacking a fixed residence” because it is more versatile. Also, “homeless” has a fixed definition in federal regulations that does not meet the circumstances here. Registration of Sex Offenders who Lack a Fixed Residence  
Offenders who find themselves without a traditional, stable living situation will not be referenced as “transient” or as “homeless,” but as offenders who “lack a fixed residence.”

- 17) Clarify and create in statute the registration requirement for and self-verification by sex offenders who “Lack a Fixed Residence.”

The following 9 items comprise this single recommendation.

- a) “Lacks a Fixed Residence.” Add definition: 16-22-102 (4.1) – “lacks a fixed residence” means the person does not have a living situation that meets the definition of residence pursuant to 16 -22-102(5.7) and includes, but is not limited to, outdoor sleeping locations or any public or private locations not designed as regular sleeping accommodations. “Lacks a fixed residence” also includes a public or private temporary shelter or an institution if the owner of the shelter or person providing the shelter

consents to the person utilizing the shelter or institution as his or her registered address as required by 16-22-106(4) and if the person remains at the shelter or for less than 30 days.

- b) Shelters as a residence. Amend definition in 16-22-102(5.7) of “residence” to clarify that it only applies to occupancy in a shelter for a time period longer than 30 days.
- c) Requirement to register and to accept registrations. Change 16-22 -108 -- each person who is required to register pursuant to 16-22-103 shall register with local law enforcement in each jurisdiction in which the person resides “or is located without a fixed residence pursuant to 16-22-102 (4.1).” **LAW ENFORCEMENT IS REQUIRED TO ACCEPT THE REGISTRATION OF OFFENDERS WHO “LACK A FIXED RESIDENCE.”**
- d) “Geo-locations.” Change 16-22-109(1) – If a person lacks a fixed residence as defined in 16-22-102(4.1) , the person shall be required to provide to local law enforcement the location where the offender habitually sleeps including, but is not limited to, cross streets, intersections, direction and identifiable landmarks of that location.
- e) Self-verification. Change 16-22-109 (3.5) to add: If a person lacks a fixed residence, verification of the location reported by the registrant shall be accomplished by self-verification reporting as described in section 16-22- .... (INSERT THE NEW SECTION REFERENCE HERE THAT DEFINES THE ENHANCED REPORTING REQUIREMENTS/VERIFICATION EVENT AS SEEN BELOW IN “17g”). Add language that says: “Law enforcement shall not be required to verify the physical address of an offender who is required to comply with section 16-22-... because verification for offenders who lack a fixed residence shall be accomplished through the self-verification enhanced reporting process.”
- f) Residence/non-fixed residence changes. Add new section regarding changing to and from “lacks a fixed residence”:
  - i. a person with a residence as defined in 16-22-102(5.7) who vacates the residence and subsequently has no fixed residence shall report that change in status within 5 days after ceasing to have a fixed residence and shall comply with the requirements of 16-22 – (INSERT THE NEW SECTION REFERENCE AS SEEN IN “17g”) and 16-22-109 for the time period during which the person has no fixed residence.
  - ii. A person who lacks a fixed residence as defined in 16-22-102(4.1) who obtains fixed residence as defined in 16-22-102(5.7) shall report the change in status within 5 days after establishing the residence.
  - iii. Make clear that failure to comply with this section is a failure to report a change of address and punishable as provided under current law as a failure to register.
- g) Reporting requirements and penalties. Add a new section regarding the self-verification process describing the enhanced reporting requirements and penalties:

- i. In addition to any other requirements pursuant to this section, a person who is subject to annual registration and without a fixed residence shall, every 90 days, report to local law enforcement in whose jurisdiction or jurisdictions the person is registered for self-verification of the location of the offender. This self-verification process shall be accomplished consistent with any time schedule established by the local jurisdiction. The person shall verify his or her location and provide any information required to be reported pursuant 16-22-109.
  - ii. In addition to any other requirements pursuant to this section, a person who is subject to quarterly registration pursuant to this section and who is without a fixed residence shall, every 30 days, report to local law enforcement in whose jurisdiction or jurisdictions the person is registered for self-verification of the location of the offender. This self-verification reporting shall be accomplished consistent with any time schedule established by the local jurisdiction. The person shall verify his or her location and provide any information required to be reported pursuant 16-22-109.
  - iii. An offender without a fixed residence who fails to comply with the provision of this section shall be subject to prosecution for the crime of failure to verify location. Failure to verify location by an offender without a fixed residence shall constitute a criminal misdemeanor offense punishable by a sentence to the county jail of up to 30 days. A third or subsequent offense shall constitute a misdemeanor offense punishable by a sentence of up to one year in the county jail. Failure to verify location shall not be labeled a sex offense per 16-11.7-102(2)(a)(II) which would subject the offender to the requirements of evaluation and identification required in CRS 16-11.7-104 and the treatment required by CRS 16-11.7-105.
  - iv. Determine whether the drafter thinks this offense should be in Title 18.
- h) Offender notification. Amend section 16-22- 106 and 107 to require a notification to any offender required to register, pursuant to this section, of the duty to report the change of address to “lacks a fixed residence” status and the requirement to comply with the statutory provisions regarding self-verification.
  - i) Data reporting. Add language that requires local law enforcement and CBI to report to CDPS information regarding the number of offenders who lack a fixed residence and any other information requested by the Department to follow up with this legislation to assess its effectiveness and/or need for modification.

## Discussion

How do you enforce this? These individuals are required to report more frequently. It is important to address offenders who are truly homeless. However, law enforcement does not want to give an “out” to a person who just doesn’t want to give an address.

In Denver, such an individual is required to draw a map where they will be staying. Denver police actually go out to the location to make sure the individual is staying where he/she said they will be.

Will this create unintended consequences? There are cities that have ordinances that do not allow sleeping in local parks. These recommendations appear to allow transients to sleep in the park.

Is there a time frame for the police to verify if the offender truly lives where they register? There is no requirement for police to do the verification. Many police departments do not have the ability to do this. It remains an option.

What about the person who lacks a fixed residence but changes residences frequently? Law enforcement says that this population tends to stay in the same place.

The data reporting system is set up to make sure that if this doesn't work, it is discovered quickly.

In the definition of lacking a fixed residence, it includes a section that "includes, but is not limited to ....." Can that section be left out? So if you don't fit the definition of living in a residence, your only other option is that you lack a fixed residence.

Is any of this data available to the public? If the offender is an Internet eligible sex offender, then their location is available on the Internet. If the offender is not Internet eligible, their location can be obtained at the local law enforcement agency.

In the definition of lacking a fixed residence, the term "institution" is used. Does this mean mental health institution or a treatment center? Ms. Cain will work on this language.

Did you have conversations about persons under the age 18? No. The registration rules were changed last year. Upon successful termination of parole or probation, a juvenile can be removed from the registry. While they are on probation or parole, their case manager usually knows where they are and makes sure the juvenile's location is registered.

#### Refinement Working Group

Erin Jamison and Peggy Heil presented the work of the Refinement Working Group. The work group focused on life-time supervision.

The following are general concepts:

1. Develop collaborative training programs:
2. Improve that collection and consistency of data to evaluate the impact of the lifetime supervision act:
3. Identify a group to study sex offender specialty courts and determine their viability in Colorado.

The following are Community Correction concepts:

4. Increase community corrections placement options and bed capacity for sex offenders as an intermediate alternative to placement in the Department of Corrections or the Division of Probation Services.
5. Fund a higher per diem (\$33.02) for specialized sex offender community corrections programs.
6. Charge DCJ, DOC and Probation to study the potential cost savings related to the higher-per diem Community Corrections options relative to the costs of retention in or revocation to DOC.
7. Approach CACCB\* to work collaboratively on training for community corrections board members. (\*Colorado Association of Community Corrections Boards)
8. Provide funding to Probation Services (Judicial) to contract directly with Community Corrections agencies and programs to house COPr (condition of probation) sex offenders for residential sex offender treatment.
9. Expand funding to the Division of Parole (DOC) to negotiate an increase in the number of beds in Community Corrections agencies and programs to house COPa (condition of parole) sex offenders for residential sex offender treatment.
10. Address the increasing trend of residency restrictions and zoning ordinances that overly reduce housing options for sex offenders which, in turn, disrupt successful supervision and community corrections options.

The following are treatment concepts

11. Increase treatment resources at DOC.
12. Recommend mapping parole and probation offenders and treatment providers by judicial district to evaluate gaps in treatment availability.
13. Fund a Sex Offender Victim Specialist (SOVS) FTE to work in coordination with the sex offender treatment program to continue the current DOC grant-funded SOVS services.

The following are Parole Board concepts:

14. Conduct regular and ongoing training on Lifetime Supervision and sex offender management as a part of the required Parole Board member training.
15. The State Board of Parole and treatment staff of the DOC Sex Offender Treatment and Monitoring Program should develop a regular system of feedback when sex offenders who meet SOMB criteria are denied parole.
16. Require multiple member review of all parole release applications to the State Board of Parole (full board or 3-person review) when a sex offender meets all SOMB treatment criteria.

Discussion:

Was the purpose of recommending a higher per diem for sex offender in Community Correction programs, a way to transition people out of DOC? Community Corrections Boards are reluctant to have sex offenders in their programs.



Sex offenders are required to participate in the treatment. This has increased the demand for treatment demand yet the resources have not kept up. One recommendation is to increase the resources.

There is an increasing number of municipalities and counties that impose residency restrictions or zoning ordinances in the housing of sex offenders. From 2004 to 2011 the number of restricted locations changed from 16 to 32. This causes a domino effect – adjacent municipalities follow suit when neighbor imposes restrictions. Over time there will be more municipalities that will add the restrictions. In Denver, Community Corrections facilities are close to schools and parks, which limit their usage for residences. There is a pending court case about the constitutionality of these ordinances.

Have you looked at states that have passed legislation that prohibits these restrictions? Yes. Kansas has passed such a law.

What is the current research on treatment? There is a variety of treatment programs. Some types of treatment were found to increase recidivism, and while other treatments were proven effective. The Sex Offender Management Board reviews standards and researches treatments to fine ones that are effective.

#### UPDATE from the SOMB: CNTAT

The Commission passed a recommendation to create and improved risk assessment classification for registered sex offenders and a public notification system that is more functional to law enforcement and more informative to the community. This recommendation was passed on to the Sex Offender Management Board to further develop the risk assessment.

The following 11 items comprise a single recommendation.

- 1) Adopt the existing Sex Offender Risk Scale (SORS) from the SVP assessment instrument for the new risk classification system.
- 2) Create a risk classification system based on the following SORS score ranges:
  - Low Risk – 0-3 points
  - Moderate Risk – 4-6 points
  - High Risk – 7-9 points
- 3) Similar to the SVP assessment instrument, create an automatic risk classification override by moving to high risk all sexual offenders who have a prior sex crime conviction. (as defined by Colorado Sex Crime Registration Act, 16-22-102 (9), C.R.S.).
- 4) Apply the risk classification system to all sexual offenders who are required to register. This will require retroactive scoring for all sex offenders who are currently registered and who were previously scored on the SVP assessment instrument. Registered sex offenders designated as SVP would be automatically classified as high risk in the new risk classification system.
- 5) Place all adult sexual offenders, including those with misdemeanor offenses who are not currently on the website, on the state public registry website with their risk level noted.

- 6) Allow an option, as currently exists, for law enforcement to increase the frequency of address verification for certain high risk offenders. Therefore, no change in registration requirements based on risk is recommended.
- 7) Repeal the existing SVP risk classification system and community notification protocol requirement, including specific notations of the crime type, date, and relationship type requirements.
- 8) Community notification meetings shall be optional rather than mandatory. Additionally, any optional community notification meeting conducted by a local law enforcement jurisdiction may only address high risk offenders and must follow the existing community notification protocol developed by the SOMB: CNTAT.
- 9) If resources become available, develop a “blast email” notification system for all adult sexual offenders as required by AWA.
- 10) Ensure that consistent and equivalent information is released to the public on adult sexual offenders across all information sources (state website, county website, and registrant paper lists), and remove all information on juvenile registrants.
- 11) Develop and fund a risk assessment committee or board to complete the retroactive and future risk classification assignments for all sex offenders, including those no longer under supervision or who have been already assessed by the SVP instrument.

**Next Meeting:**

The Commission will have full day meetings in both October and November. Next meeting will be October 14<sup>th</sup> from 9:00 – 4:30. Next month will be a preview of recommendations from the Drug Task Force preview and the Sentencing Task Force.

The meeting adjourned at 4:43 p.m.